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Elsa Keller, Legal Assistant
Intellectual Property Department
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186 Wood Avenue South
Iselin NJ 08830

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OFFICE OF PETITIONS

In re Application of :
Kevin O'Rourke :
Application No. 09/939,899 : **DECISION ON PETITION**
Filed: August 27, 2001 :
Attorney Docket No. 2001P07802US01 :

This is a decision on the renewed petition under 37 CFR 1.181 (no fee), filed September 11, 2008, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before January 4, 2008, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed October 4, 2007.

Petitioner asserts that the Notice dated October 4, 2007 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from practitioner stating that the Notice was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and
3. a copy of the docket record where the nonreceived Notice would have been entered and docketed had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center AU 2174 technical support staff for re-mailing the Notice of Allowability and the Notice of Allowance and Fee(s) Due of October 4, 2007. The period for paying the issue and publication fees and submitting corrected drawings will be reset to expire three (3) months from the date the Notices are re-mailed. This period is not extendable under the provisions of 37 CFR 1.136.

Telephone inquiries concerning this decision should be directed to Christopher Bottorff at (571) 272-6692.



David Bucci
Petitions Examiner
Office of Petitions